

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

THE ELLIOTT SALES GROUP, INC.

V.

C.A. NO. 96-592-T

DARE DEVELOPMENT GROUP, INC.
D/B/A MISSION ROLLER HOCKEY

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge.

Dare Development Group, Inc. ("Dare") has moved, pursuant to Fed. R. Civ. P. 12(b)(2), to dismiss the complaint of Elliott Sales Group, Inc. ("Elliott") for lack of personal jurisdiction. Dare objects to a Magistrate Judge's Report recommending denial of Dare's motion to dismiss and Elliott has filed a provisional cross objection to that portion of the Report finding only supplemental jurisdiction with respect to one of the counts.

The principal issue presented is whether Dare has sufficient minimum contacts with Rhode Island to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment. Because I answer that question in the affirmative, albeit for reasons somewhat different from those expressed by the Magistrate Judge, the recommendation is accepted and Dare's motion to dismiss is denied.

Background

The relevant factual allegations set forth in the complaint and the affidavits submitted by the parties are as follows. Dare is a California corporation that manufactures in-line skates and

related equipment. Elliott is a Rhode Island corporation that designs and produces point-of-sale displays that are used in retail establishments to display products to potential customers.

In June 1995, James Hourigan, Elliott's sales manager, met Thomas Wilder, Dare's president, at a trade show in Chicago. Wilder expressed interest in Elliott's displays and, later, called Elliott to request that it design a display for Dare's products. To facilitate the process, Dare mailed its catalog and several of its products to Elliott.

In August 1996, Elliott faxed its completed designs to Dare. Wilder responded by suggesting several modifications. After Elliott faxed a revised design to Dare, Wilder called Elliott and requested that it produce a prototype display. One week later, Elliott shipped the prototype to Dare.

Shortly thereafter, Hourigan met with Wilder in California. Wilder indicated that he liked the prototype but no sale was consummated because the parties were unable to reach agreement on the price to be paid.

Several months later, when Hourigan was in California, he saw Dare's products being displayed in point-of-sale displays which he describes as being virtually identical to those that Elliott had designed. That discovery precipitated this suit.

Elliott's initial complaint contained state law claims for (1) breach of an implied or quasi contract, (2) conversion and (3) misappropriation of trade secrets. Dare moved, pursuant to Fed. R. Civ. P. 12(b)(2), to dismiss those claims for lack of personal

jurisdiction. Elliott responded with an affidavit by Hourigan reciting the facts upon which Elliott relies to establish jurisdiction. Dare, in turn, moved to strike portions of the Hourigan affidavit on the ground that, inter alia, they were not based on personal knowledge.

The motions to dismiss and to strike were referred to a Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), for a Report and Recommendation. Before the Magistrate Judge heard arguments with respect to those motions, Elliott was granted permission to amend its complaint by adding a federal claim for copyright infringement.

Since Dare did not move to dismiss the copyright infringement claim, the Magistrate Judge addressed only the motion to dismiss the three state law claims contained in the original complaint. For reasons that are not entirely clear, he did not rule on the motion to strike Hourigan's affidavit.

In any event, the Magistrate Judge concluded that the Court has personal jurisdiction over Dare in connection with the tort claims for conversion and misappropriation and recommended denial of the motion to dismiss those claims. The Magistrate Judge also concluded that jurisdiction over the quasi contract claim was lacking but he recommended denial of the motion to dismiss that claim, as well, on the ground that the Court had pendent jurisdiction over it. Dare objects to the finding that it is subject to personal jurisdiction regarding the tort claims and Elliott objects to the finding that personal jurisdiction regarding

the quasi contract claim is lacking.

Discussion

I. Personal Jurisdiction

The plaintiff bears the burden of establishing the existence of personal jurisdiction over a defendant. Sawtelle v. Farrell, 70 F.3d 1381, 1387 (1st Cir. 1995). When the plaintiff's allegations with respect to the jurisdictional facts are undisputed, the Court accepts them as true in determining whether jurisdiction has been established. See Boit v. Gar-Tec Prods., Inc. 967 F.2d 671, 675 (1st Cir. 1992).

In diversity cases, establishing in personam jurisdiction requires a dual showing that: (1) the forum state has a long-arm statute that purports to grant jurisdiction over the defendant and (2) exercising jurisdiction comports with the due process requirements of the Fourteenth Amendment. Sawtelle, 70 F.3d at 1387.

Since Rhode Island's long-arm statute claims jurisdiction to the maximum extent permitted by the Fourteenth Amendment, the question, in this case, is whether asserting personal jurisdiction over Dare is consistent with the Due Process Clause. Stated another way, the relevant inquiry is whether Dare has sufficient minimum contacts with Rhode Island that subjecting it to the jurisdiction of this Court will not offend "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer,

311 U.S. 457, 463 (1940)).

Because "fair play and substantial justice" are amorphous concepts that are shaped by the particular facts of each case, personal jurisdiction has been the subject of numerous judicial pronouncements but its boundaries remain blurred. There are two kinds of personal jurisdiction. General jurisdiction exists when the defendant's activities within the forum are "continuous and systematic." Pritzker v. Yari, 42 F.3d 53, 60 (1st Cir. 1994); Sandstrom v. ChemLawn Corp., 904 F.2d 83, 88 (1st Cir. 1990). Specific jurisdiction, on the other hand, exists only "where the cause of action arises directly out of, or relates to, the defendant's forum-based contacts." Pritzker, 42 F.3d at 60 (quoting United Elec. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1088-89 (1st Cir. 1992)).

In this case, it is clear that Dare's contacts with Rhode Island are not sufficient to confer general jurisdiction. Therefore, the question presented is whether the doctrine of specific jurisdiction applies.

The First Circuit has prescribed a three-part test for determining whether a defendant's contacts with the forum are sufficient to establish specific personal jurisdiction.

First, the claim underlying the litigation must directly arise out of, or relate to, the defendant's forum-state activities. Second, the defendant's in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable. Third,

the exercise of jurisdiction must, in light of the Gestalt factors, be reasonable.

Sawtelle, 70 F.3d at 1389 (quoting United Elec. Workers, 960 F.2d at 1089).

The "Gestalt factors" include a variety of considerations¹ that come into play only if the relatedness and purposeful availment prongs of the test are satisfied. Moreover, the weight accorded to the "Gestalt factors" is inversely proportional to the strength of the showing made with respect to relatedness and purposeful availment. Thus, the "weaker the plaintiff's showings on the first two prongs (relatedness and purposeful availment), the less a defendant need show in terms of unreasonableness to defeat jurisdiction. The reverse is equally true: an especially strong showing of reasonableness may serve to fortify a borderline showing of relatedness and purposefulness." Id. at 1394 (quoting Ticketmaster-New York, Inc. v. Alioto, 26 F.3d 201, 210 (1st Cir. 1994)); see also Nowak v. Tak How Investments, Ltd., 94 F.3d 708, 717 (1st Cir. 1996) ("The purpose of the gestalt factors is to aid

¹The Gestalt factors are:

(1) the defendant's burden of appearing; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies.

Id. at 1394.

the court in achieving substantial justice, particularly where the minimum contacts question is very close. In such cases, the gestalt factors may tip the constitutional balance.").

A. Relatedness

The relatedness requirement "focuses on the nexus between the defendant's contacts and the plaintiff's cause of action." Id. at 714 (quoting Ticketmaster, 26 F.3d at 206). Proximate cause often is used as a surrogate for relatedness "because it so easily correlates to foreseeability, a significant component of the jurisdictional inquiry." Id. at 715. However, the two terms are not necessarily synonymous. Even in tort cases, the proximate cause standard, sometimes, is "unnecessarily restrictive," and the more "flexible, relaxed standard" of relatedness is utilized. Id. at 715-16 ("[W]e intend to emphasize the importance of proximate causation, but to allow a slight loosening of that standard when circumstances dictate. We think such flexibility is necessary in the jurisdictional inquiry: relatedness cannot merely be reduced to one tort concept for all circumstances.").

A more relaxed standard is particularly appropriate in situations where the activity giving rise to the cause of action stems from contact in the forum state that was initiated by the defendant. As the First Circuit has explained:

When a foreign corporation directly targets residents in an ongoing effort to further a business relationship, and achieves its purpose, it may not necessarily be unreasonable to subject that corporation to forum

jurisdiction when the efforts lead to a tortious result. The corporation's own conduct increases the likelihood that a specific resident will respond favorably. If the resident is harmed while engaged in activities integral to the relationship the corporation sought to establish, we think the nexus between the contacts and the cause of action is sufficiently strong to survive the due process inquiry at least at the relatedness stage.

Id.

In this case, all of Elliott's claims "directly arise out of, or relate to" events flowing from the relationship that Dare initiated by its forum-directed conduct. Dare communicated with Elliott, in Rhode Island, for the purpose of inducing Elliott to prepare designs for and a prototype of a point-of-sale display. Moreover, in order to facilitate that undertaking, Dare shipped its catalog and some of its products to Elliott in Rhode Island. Those activities caused Elliott to produce the display that is the subject of this action and enabled Dare to engage in the alleged misappropriation of Elliott's work.

B. Purposeful Availment

The pillars upon which the concept of "purposeful availment" rests are "voluntariness and foreseeability." Sawtelle, 70 F.3d at 1391 (citing Ticketmaster, 26 F.3d at 207); see also Nowak, 94 F.3d at 716. In order to be considered "voluntary," contact with the forum must result from the defendant's free choice and must be the product of something more than "the unilateral actions of another party or third person." Id.; see also Ticketmaster, 26 F.3d at 207-08. Foreseeability requires that the defendant's "conduct and

connection with the forum State are such that he should reasonably anticipate being haled into court there." Donatelli v. National Hockey League, 893 F.2d 459, 464 (1st Cir. 1990) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

In determining whether the purposeful availment requirement has been satisfied, courts, sometimes, find it helpful to tailor the inquiry to the type of claim asserted. See, e.g., Anderson v. Century Prods. Co., 943 F. Supp. 137 (D.N.H. 1996); Thompson Trading Ltd. v. Allied Lyons PLC, 123 F.R.D. 417 (D.R.I. 1989). Thus, in contract cases, a "contract-plus" analysis may be utilized. Under that approach, the mere fact that the defendant entered into a contract in the forum state is not sufficient to confer jurisdiction. Rather, the court must consider the "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479 (1985). In tort cases, on the other hand, the analysis commonly focuses on whether the defendant intentionally engaged in tortious conduct knowing that it was likely to cause injury in the forum state. See Hugel v. McNell, 886 F.2d 1, 4 (1st Cir. 1989) ("The knowledge that the major impact of the injury would be felt in the forum State constitutes a purposeful contact or substantial connection whereby the intentional tortfeasor could reasonably expect to be haled into the forum State's courts to defend his actions.").

This case does not fit neatly into either category. Count I, essentially, is a claim for unjust enrichment rather than breach of contract. In addition, although Counts II and III sound in tort, the aforementioned "tort test" is ill suited to determining the "fairness" of asserting personal jurisdiction in a case like this because it would require metaphysical determinations regarding such matters as the situs of the injury.

In any event, it is not necessary to rigidly characterize this case as a contract case or a tort case. Regardless of the nature of the claim, the ultimate inquiry in determining whether personal jurisdiction exists is whether the defendant voluntarily committed acts that occurred in or were directed at the forum state under circumstances making it reasonably foreseeable that he would be haled into court there. See Nowak, 94 F.3d at 716.

In this case, those requirements are satisfied. Dare initiated the relationship between the parties by choosing to communicate with Elliott, in Rhode Island, for the purpose of inducing Elliott to prepare and deliver designs for and a prototype of a point-of-sale display to be used by Dare. Dare's contacts with Rhode Island were not the product of any unilateral action by Elliott. In addition, those contacts were an integral part of the conduct resulting in the claimed injury even though the alleged misappropriation, itself, occurred in California. Finally, Dare knew or should have known that any misappropriation of Elliott's

design would cause harm to Elliott's business, based in Rhode Island, thereby making it reasonably foreseeable that Dare would be haled into court here.

C. The Gestalt Factors

The Gestalt factors also support the conclusion that exercising personal jurisdiction over Dare satisfies the requirements of "fair play and substantial justice." As already noted, those factors include:

(1) the defendant's burden of appearing; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies.

Sawtelle, 70 F.3d at 1394.

There is little that this Court can add to the Magistrate Judge's careful analysis of those factors. Appearing in an out-of-state forum is always burdensome to a defendant. However, that burden becomes a significant factor only if it is unusually onerous. Nowak, 94 F.3d at 718. Here, there is nothing unusually burdensome about requiring Dare to litigate in Rhode Island.

Moreover, Rhode Island has a strong interest in adjudicating disputes arising from harm allegedly sustained by its residents as a result of purposeful activity conducted by the defendant in Rhode Island. Elliott has a corresponding interest in seeking relief in Rhode Island as the most convenient forum. The remaining Gestalt

factors are "a wash," id., inasmuch as the controversy could be effectively resolved in a manner promoting the substantive policies of both Rhode Island and California if the case were litigated in either place.

II. Miscellaneous Issues

There is no need to address Dare's motion to strike portions of the Hourigan affidavit which was not ruled upon by the Magistrate Judge. It is not necessary to consider any of the facts asserted in the disputed portion of the affidavit in order to determine whether personal jurisdiction exists because neither the Magistrate Judge nor this Court relied upon those assertions in deciding the motion to dismiss.

Nor is there any need to address the claim that personal jurisdiction is conferred by the copyright infringement claim. As already noted, the Magistrate Judge did not address that issue because the motion to dismiss was not directed at the copyright infringement claim and, apparently, counsel did not brief or argue the question. Moreover, that issue, too, has become moot in light of the determination that personal jurisdiction exists with respect to the three state law claims.

Conclusion

For all of the foregoing reasons, the Magistrate Judge's recommendation is accepted and Dare's motion to dismiss is denied. IT IS SO ORDERED,

Ernest C. Torres
United States District Judge

Date: August , 1998

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